

Call for evidence

Not for profit delivery of deputyship
services

This call for evidence begins on 04/08/11

This call for evidence ends on 27/10/11

Call for evidence

Not for profit delivery of deputyship
services

About this call for evidence

To: Not for profit organisations with capability to deliver deputyship services.

Duration: From 04/08/11 to 27/10/11

How to respond: Our preference is for responses via email for ease of analysis.

Email: OPGPaneldeputies@publicguardian.gsi.gov.uk

Or you can respond in hard copy to:

Call for evidence

Helen Morris
Office of the Public Guardian
3rd Floor Archway Tower
2 Junction Road
London, N19 5SZ

Tel: 020 7664 7746

If you would like to submit relevant articles or research please email or post them to the same address.

Please submit responses as soon as possible and no later than **Friday 27 October 2011**. The OPG intends to use all evidence submitted in forming its recommendations.

All evidence regarding costs will be anonymous. If you would like the rest of your evidence to remain confidential or anonymous please indicate this in your response.

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Introduction

“Access to the rights and protection afforded by the Mental Capacity Act should be easy, simple, and affordable to all.”

Public Guardian Board Annual Report 2010

Described as being on a par with the Human Rights Act in terms of impact, the potential reach of the Mental Capacity Act (MCA) stretches all the way through our society, through a highly diverse gamut of people in a highly diverse range of circumstances: from age-related conditions such as Alzheimer’s and dementia to those with mental illness, brain injury or learning disabilities. A key plank in ensuring that these people are afforded the empowerment and protection built into the Act is the provision of an accessible and proportionate deputyship service: both in the expertise provided, and the cost.

To further this aim the Office of the Public Guardian (OPG) is interested in engaging more not-for-profit organisations and to this end is seeking to find out what interest there would be, and what barriers exist, to the uptake of deputyship work in the sector.

Background

The Mental Capacity Act 2005, implemented in 2007, gave the Court of Protection the authority to empower someone, known as a deputy, to act on behalf of a person with impaired capacity. A deputy may be appointed to make decisions about someone’s finances (a Property and Affairs deputy) or their personal welfare (including health and medical decisions).

Most often a deputy will be a relation: the husband or wife or son or daughter of the person with impaired capacity. Sometimes however there is no one close to the person and the Court will seek to appoint a third party. If the deputy is not a family member or friend they are known as a professional deputy and are entitled to charge the person with impaired capacity a fee for their services.

The OPG believes that, whilst some deputyships involve the management of complex financial portfolios and an element of litigation meaning that it is necessary to involve a law firm, there are a significant number of people whose administrative needs are straightforward. For example, a property and affairs deputy may just need to ensure that financial needs are identified, bills are paid, and look after day to day living expenses. Many of these people would benefit from the ‘soft’ or

pastoral skills of advocates, social workers and similar, and the value for money represented by organisations run on a not-for-profit basis

Purpose of the call for evidence

This call for evidence was prompted by the low response from the not-for-profit sector to the OPG campaign to form a new Panel of Deputies – the list of approved deputies the Court can turn to when there is no one else suitable or willing to act.

The OPG would like to facilitate the development of a wider range of options for people who require a deputy, giving the Court a greater choice when looking who to appoint.

We hope that by better understanding the barriers that exist and supporting partners in civil society we can facilitate a greater range of solutions for persons lacking mental capacity, away from more costly legal solutions for the individual, away from local government, and towards not-for-profit organisations in line with the government's 'Big Society' agenda.

The Mental Capacity Act and the Big Society

Whilst the Big Society agenda itself is a recent innovation, much of the policy and legislative environment within which OPG operates within has been moving us in this direction as early as the year 2000.

Previously “last resort” Deputyship services were delivered ‘in-house’ by civil servants in the former Public Guardianship Office. Between 2001 and 2007, in light of the changes that the MCA formalised, care of these people’s affairs was gradually moved away from central government and entrusted to people closer to the individuals concerned: to people’s relatives or friends; local authorities involved in the delivery of local care services; solicitors with appropriate expertise; and, to a very small proportion of advocates and individual specialists.

The Mental Capacity Act has also meant a shift away from a paternalistic approach to managing the affairs of people who lack capacity towards inclusiveness, involvement and choice.

These changes mean the skills and experience of many organisations in the not-for-profit sector would seemingly lend themselves very well to the Panel and the delivery of deputyship services generally.

It may be that your organisation has simply never considered the question prior to this, or it may be that your organisation had considered and then rejected this type of work.

We would be interested in your views no matter what the scenario.

The questions are divided into two sections. The first section deals with general questions about the appetite and suitability of your organisation for taking on deputyships.

The second part deals specifically with the costs of being a deputy as the OPG wishes to work with the Court to introduce a framework governing the fees that not-for-profit organisations would be eligible to charge. There are already frameworks governing costs for lawyers and local authorities.

A recommendation on costs for not-for-profit organisations will be made to the Court based on the evidence OPG receives.

Some organisations may be better placed to respond to all parts of the paper, only to one section or not all the questions in each section. Please respond to which ever questions you are able – even a small quantity of information would be of help.

Further information

Being a Deputy involves administering the affairs of people with impaired capacity and making decisions on their behalf. The OPG operates a framework of supervision, most often on a yearly basis.

The OPG needs assurance that Property and Affairs deputies are handling accounts and making decisions in a secure and readily auditable manner, and those decisions are being made in a person's best interests. This means recording and accounting systems must be in place. This should not, however, be prohibitive to most organisations, particularly those already handling finances in some way, shape or form.

Similarly for Personal Welfare deputies a clear record should be kept of decisions that have been made and how the client's best interests have been served.

You may need to know more details about the work of the OPG and what being a deputy entails to be able to respond. Further information can be found on our website:

www.direct.gov.uk/en/Governmentcitizensandrights/Mentalcapacityandthelaw/Makingdecisionsforsomeoneelse/DG_195265

Or by contacting the team directly on:

OPGPanelDeputies@publicguardian.gsi.gov.uk

Questions

Would your organisation be suited to taking on deputyship work?

Being a deputy can be in such a range of circumstances and for such a diverse cross section of people that it may be hard to provide straightforward 'yes' or 'no' answers to these questions. Please do add in contextual information about any relevant specialisms your organisation would offer.

1. Would supporting vulnerable people in decision making through deputyships be something your organisation would consider?
2. Do you think your organisation would be suited to taking on Personal Welfare deputyships? It's worth noting the Court of Protection makes extremely few Personal Welfare deputy orders. The vast majority are Property & Affairs.
3. Do you think your organisation would be suited to taking on Property & Affairs deputyships? Would you need significantly to alter your systems to provide accounting or does your organisation already have a suitable financial management capability?
4. What barriers would there be to your taking on deputyship work? How could the OPG support you to overcome those barriers?
5. If you would like to add any additional information that might supplement these questions please do contribute.

What fee would your organisation charge for providing a deputyship service?

Remember that the Office of the Public Guardian will not be paying the fee – the fee is charged to the estate of the person lacking capacity.

The Court of Protection can allow deputies remuneration out of the funds of the person lacking capacity. The court is likely to do this by issuing a costs practice direction' for not-for-profit deputies, setting out fixed fees for certain types of work. There is currently a fixed costs practice direction for solicitor and local authority deputies.

If an organisation wants to charge more than the fixed costs practice direction states then the court can allow the deputy to be paid on a variable costs basis. Currently they must send a justification and a break down of assessed costs to the Senior Courts Costs Office, which will assess the claim.

How the client is being charged must be fair and transparent. Charges will have to cover office overheads but mustn't be used to pay for other services outside of the deputy role: for example if the deputy provides some advocacy to the client they must not use the deputy charges to subsidise this.

6. Local authorities provide deputyship services under a fixed costs practice direction. The relevant costs from the practice direction are reproduced below. If you would like to read the practice direction in full it is on the Court's website at:

www.judiciary.gov.uk/publications-and-reports/practice-directions/2011/fixed-costs-court-protection-practice-direction-

FIXED COSTS FOR PUBLIC AUTHORITIES

Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs: Amount £670.

Annual management fee where the court appoints a local authority deputy for property and affairs, payable on the anniversary of the court order:

for the first year: Amount £700

for the second and subsequent years: Amount £585

Provided that, where the net assets of the person with impaired capacity (P) are below £16,000, the local authority deputy for property and affairs may take an annual management fee not exceeding 3% of P's net assets on the anniversary of the court order appointing the local authority as deputy

Where the court appoints a local authority deputy for health and welfare, the local authority may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the local authority as deputy for health and welfare up to a maximum of £500.

Annual property management fee to include work involved in preparing property for sale, instructing agents, conveyancers, etc or the ongoing maintenance of property including management and letting of a rental property: Amount £270.

Preparation and lodgement of an annual report or account to the Public Guardian : Amount £195

Would your organisation be able to charge within this framework? If not can you provide an example of how you cost other types of work, e.g. by hourly rate or by annual grant? Please show a breakdown of this figure, for example: how much for time spent with the client; how much for administration; how much for management overheads.

7. OPG will be working with the Senior Courts Costs Office, as mentioned above, who would be assessing costs based on an hourly rate for organisations where fixed costs do not apply.

Looking at comparators, such as a senior social worker's fee for court work, OPG would suggest £70 per hour.

Please comment on this figure as applicable to your organisation. Again, can some indication be given of how this figure, or the figure you are proposing, was reached?

8. Would you prefer to use an alternative model for charging costs? Please give details of what model you would propose to use.
9. There are a certain percentage of cases where the client's funds are so small that they need support provided free of charge (pro bono). If so, in what proportion (we recognise this may depend on how your organisation is funded)? Would your organisation take such work at a reduced rate or free of charge?
10. If you would like to add any additional information that doesn't quite fit into these questions please add it below.

Thank you for participating in this call for evidence exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Our preference is for emailed responses:

Email: OPGPaneldeputies@publicguardian.gsi.gov.uk

Or write to:

Call for evidence

Helen Morris
Office of the Public Guardian
3rd Floor Archway Tower
2 Junction Road
London, N19 5SZ

Please send your response by 27/10/11

Tel: 0207 664 7746

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your

explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

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Alternative format versions of this report are available on request from Helen Morris
OPGPaneldeputies@publicguardian.gsi.gov.uk